

Officer Involved Shooting of Andy Le Vo
Long Beach Police Department

Officer Justin Krueger #6152
Officer Bryan Pasion #10845

J.S.I.D. File #18-0015



JACKIE LACEY

District Attorney

Justice System Integrity Division

December 18, 2019

MEMORANDUM

TO: CHIEF ROBERT G. LUNA
Long Beach Police Department
400 West Broadway
Long Beach, California 90802

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Andy Le Vo
J.S.I.D. File #18-0015
L.B.P.D. File #180000844

DATE: December 18, 2019

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the January 5, 2018, fatal shooting of Andy Le Vo by Long Beach Police Department (LBPd) Officers Justin Krueger and Bryan Pasion. We have concluded that the officers acted in lawful defense of another.

The District Attorney's Command Center was notified of the shooting at approximately 3:13 a.m., on January 5, 2018. The District Attorney Response Team (DART) responded to the location and was given a briefing regarding the circumstances surrounding the shooting and a walk-through of the scene.

The following analysis is based on investigative reports, audio recordings, transcripts of interviews, firearm analysis reports, the autopsy report, crime scene diagrams and sketches, photographic and video evidence, and witness statements submitted by LBPd Detectives Teryl Hubert, Michael Hubbard, and Scott Lasch.

FACTUAL ANALYSIS

On January 4, 2018, Andy Le Vo entered the Westminster Police Station and spoke with Officer Travis Hartman. As reported by Hartman, Vo displayed symptoms of mental illness. Vo acted delusional and paranoid and admitted that he was addicted to methamphetamine. Vo initially stated that his wife and children were possibly in danger and were going to be hurt. However, he could articulate no specific details about why he thought they were in danger, and was unable to provide a location for his children. Vo claimed that his children had been kidnapped by someone and that he was made aware of the kidnapping by voices coming from the television and other electronic devices. Vo complained that an ex-girlfriend had put cameras in the television to watch Vo and that she was making Vo use drugs. Vo had spoken with his children three days earlier, and had last seen them at Christmas. Vo thought his wife and children were in San Diego and provided a phone number, which Hartman called but was unsuccessful in reaching anyone. Vo complained that he

did not feel safe, asked to sleep in the station lobby, and was told no. Vo left the Westminster station upset.

Some hours after Vo went to the Westminster police station, Tom B. was in a designated right turn lane on Willow Street preparing to make a right on to Lakewood Boulevard in Long Beach. Vo, who was driving a grey Tacoma pickup,¹ turned left immediately in front of Tom B. Upset about being cut off, Tom B. followed the truck into the parking lot of a Chevron Station at the corner of Lakewood Boulevard and Willow Street. Vo parked the Tacoma and left the engine running while he ran next door toward the lobby of the Holiday Inn located on Lakewood Boulevard. Tom B. followed Vo into the hotel lobby, but upon entering saw that Vo was holding a pistol.² Tom B. then walked out and placed a 9-1-1 call. See Figures 1A and 1B below.

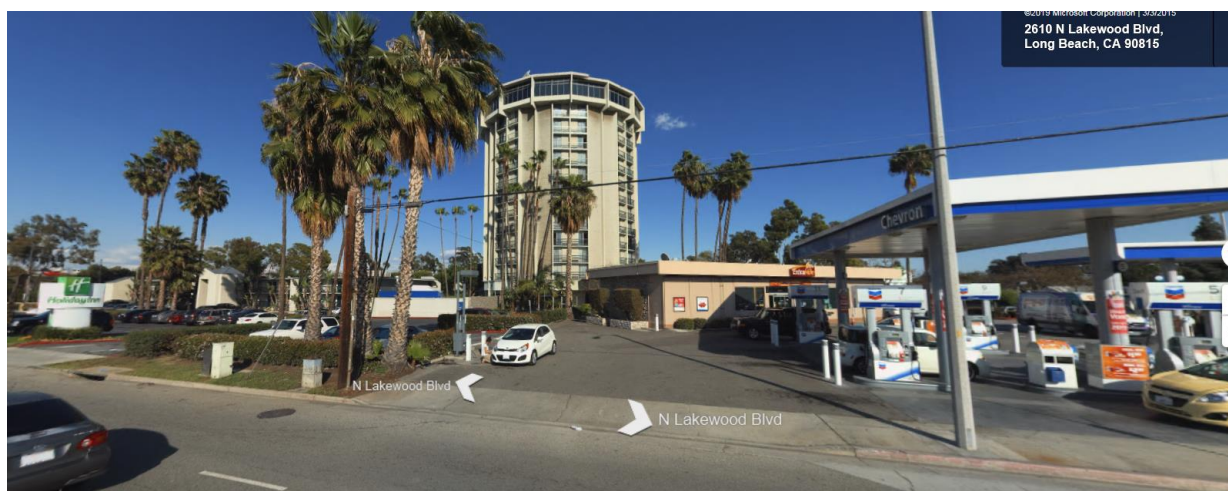


Fig. 1A: Street level view of Holiday Inn (cylindrical shaped building in back) & Chevron (in right foreground)



Fig. 1B: Vo's truck parked in Chevron lot

¹ The truck was registered to Vo's father, who routinely allowed Vo to drive the truck.

² Tom B. described Vo as holding a .45 semiautomatic pistol.

On January 5, 2018 at approximately 12:50 a.m., Vo entered the Holiday Inn lobby carrying the handgun in his left hand and a dark colored bag in his right hand. See Figure 2 below.



Fig. 2: Vo entering lobby carrying a gun in his left hand and a bag in his right hand.

Vo approached the front counter where he set down the black bag, switched the pistol to his right hand, and moved around to the employee side of the counter. Vo told Holiday Inn night shift manager Joe H. to call the police and to call the media. Seeing that Vo was armed with a handgun, Joe H. moved to the left end of the counter, picked up a handset, and called 9-1-1.

Joe H. held the receiver to his left ear with his left hand, then held his right hand up in the air in a submissive gesture. Vo momentarily set the pistol down while taking off his jacket. Samuel C., an unarmed security guard for the hotel, entered the hotel lobby at 12:51:29 a.m. as indicated by a surveillance camera time stamp.³ Joe H. said to Samuel C., “Sam, stay back please. Stay back! Stay back! He has a gun! Please, stay back!” Samuel C. stopped just inside the front doors. At 12:52:04, Vo picked up the pistol with his right hand, retrieved the bag, and appeared to wait for Joe H. while Joe H. spoke on the phone. See Figures 3A and 3B below.

³ Just prior to Vo’s entering the hotel, Joe H. radioed the hotel security guard Samuel C. to come to the front desk. Joe H.’s suspicions were aroused by a vehicle left parked with an open door in a ten-minute parking area. However, the vehicle in question does not appear to have had any connection to Vo.



Fig. 3A: Samuel C. standing by front door

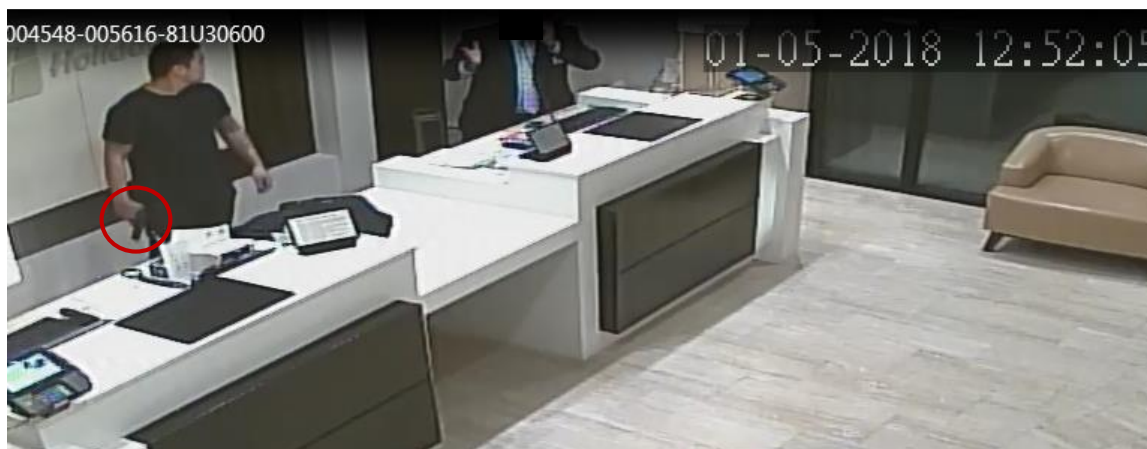


Fig. 3B: Vo, after picking up gun off the counter, is holding pistol in his right hand while Joe H. speaks with 9-1-1 operator.

At 12:52:12, Tom B. entered the lobby. Joe H. waived him back. A short time later, Vo walked to the end of the counter with the gun in hand and turned right down the hallway. Tom B. exited the lobby to place a 9-1-1 call and Samuel C. backed up closer to the lobby door. Vo returned to the front counter a short time later.

During his 9-1-1 call, Joe H. told the dispatcher that Vo had told Joe H. to call police. Joe H. let the operator know that Vo was holding a handgun and provided a physical description of Vo. When the operator asked if Joe H. was being held hostage, Joe H. said, “yes.” When the operator followed up by asking if Vo had told him to stay there, Joe H. said, “yes.”

Samuel C. asked Vo, “Are you ok? How can we help you?” Vo responded by saying, “No! My family needs help. They are holding my family hostage!” Vo then looked at Joe H. and said, “Let’s get in the backroom.” Vo said, “I called Westminster Police Department earlier and they did not help me.” Samuel C. said that Vo then got really loud and yelled at Joe H. to go to the back room. Joe H. also said that Vo told Joe H. they needed to move into the back room as Vo did not like

being out in the open. After pleading with Vo to let Joe H. remain in the lobby, Joe H. asked if there was someone else that Joe H. could call for Vo. Joe H. then relayed to the operator that Vo had asked to speak with Officer Hartman,⁴ and that Vo's family was being held in Penn Hall.

Information from Joe H.'s 9-1-1 call in progress was transmitted via police radio to LBPD officers. The broadcast stated that a man with a handgun was in the lobby of the hotel. The first LBPD officer to respond was Sergeant Eduardo De La Torre. De La Torre parked his car in the hotel parking lot, drew his service weapon, approached the front entrance, and took cover behind a concrete pillar outside the hotel lobby. De La Torre observed Samuel C. standing guard near the front door. De La Torre saw Vo behind the counter and Joe H. speaking on the telephone seven to ten feet away at the other end of the counter. De La Torre could also see Joe H. occasionally engaging Vo in conversation, but De La Torre could not hear what was said due to traffic noise. Joe H. showed signs of being stressed when Vo moved towards Joe H. As Vo moved toward Joe H., De La Torre saw Vo holding a handgun. De La Torre raised his handgun towards Vo and radio broadcast a request for a unit with an AR-15. De La Torre made eye contact with Vo. Believing Vo would not hear a verbal instruction given through the window, De La Torre signaled with his left hand in an up and down motion with his left hand while continuing to point his pistol at Vo in an effort to get Vo to raise his hands. Vo appeared to shake his head side to side as if to say "no" in response to De La Torre's gesture.

Other officers began to arrive, including Officer Justin Krueger who had just finished his patrol shift. Krueger had heard the radio dispatch about a person with a gun in the lobby of the Holiday Inn. One of Krueger's duties was serving as a member of LBPD's special weapons and tactics (SWAT) team. Krueger donned his protective vest and armed himself with his AR-15. Krueger had visibility of Vo in the lobby and was also monitoring updates from the 9-1-1 call. While watching Vo, Krueger observed that Vo was armed with a handgun.

Officer Bryan Pasion also heard the broadcast and responded to the Holiday Inn. Pasion took a position about 30 to 40 yards away from Vo at the hotel desk. Pasion saw that Vo was armed with a handgun. Pasion heard over the police radio that Joe H. told Vo he could not open the safe. Based on this information and his observations, Pasion believed that a hostage taking and robbery were in progress.

De La Torre took the lead in organizing a hostage rescue team (HRT).⁵ After speaking with Krueger, it was decided that Pasion would be the first officer to make entry should it become necessary. Due to the high risk that Vo posed to Joe H., as well as to other possible hotel guests and employees, it was decided that the team would not permit Vo to leave the hotel lobby.

As the officers arrived, Joe H. was still on the phone with 9-1-1. The 9-1-1 call ended as follows:

⁴ Hartman's business card was found in Vo's jacket pocket. Subsequent investigation confirmed that Hartman spoke to Vo some hours earlier at the Westminster police station. Hartman's interview of Vo was recorded.

⁵ Krueger reported helping to formulate an emergency action team (EAT) plan to deal with various contingencies of the hostage taking, including any movement of the hostage.

Operator: Okay, I want you to do whatever you feel that you need to do is safe. If you want me to speak to him, I can speak to him. If that's what he wants. Since he does know that you're talking to the police.

Joe H.: [muffled] Yeah.

Operator: Okay, you're doing a great job.

Joe H.: [frantically] Ok, ok, ok, ok, ok, uh, ok, he wants me to go now, so, ok, yeah, ok, I'll, right now, ok, ok, [sound of phone being set down]

Vo: [voice in background, statement indiscernible]

Officers: Drop the gun! Drop the gun!

[SOUND OF MULTIPLE GUNSHOTS]

In the moments immediately preceding the shooting, Vo moved toward Joe H. while gesturing with the pistol, then positioned himself behind Joe H. so as to move Joe H. along ahead of Vo. See Figures 4A and 4B below.



Fig. 4A – Vo makes his move towards Joe H.; this clip captures scene approximately 12 seconds before shots were fired.



Fig. 4B – Vo moving Joe H. at gunpoint six seconds before shots.

Vo waived the handgun before holding it to Joe H.'s back. Joe H. set the phone down and walked around the front of the reception desk with Vo. As Vo began to move Joe H., the HRT made its entry. Vo forced Joe H. toward the hall at the far end of the desk. Joe H. then ducked behind the reception counter.

When Vo began to force Joe H. to move at gunpoint, Pasion ran towards the front door of the hotel with Krueger, opened the door, and entered. Pasion yelled to Vo, "Drop the gun!" Pasion saw Joe H. run behind the counter. Vo still had the handgun in his hand and began to run down the hallway. Fearing that Vo posed a danger to others in the hotel and that Vo's escape into another area might lead to more hostage taking or shooting of innocent civilians, Pasion fired three to five rounds⁶ from his Springfield Operator .45 caliber semiautomatic pistol. Pasion estimated that he was 15 feet from Vo when Pasion fired his weapon.

As he made entry, Krueger also yelled, "Drop the gun!" Vo looked over his shoulder at the law enforcement team, and continued down the hall towards a door. Krueger stated that he believed that Vo was going to take the victim further down the hall and shoot him.⁷ Krueger advanced quickly to a clear line of fire and discharged an estimated three to five rounds at Vo's torso from an approximate distance of 14 feet. In the surveillance video, bullet strikes are visible against the front desk, indicating that at least some shots were fired after Joe H. turned behind the hotel counter.

Vo was shot multiple times as he fled down the hallway with the gun still in hand. See Figures 5A and 5B below. Debris from the bullet strikes came off the door at the end of the hall as Vo collapsed, suggesting that Vo sustained through and through gunshot wounds (as referenced in medical examiner's report) as he approached the door. See Figure 5B below. An office is located behind the door; an expended bullet was later recovered from that office.

⁶ This round count was based on estimate provided in Pasion's statement.

⁷ Krueger's report is not specific about the exact moment of this perception.



Fig. 5A: Vo with gun still in his right hand a split second before he collapsed after being shot.



Fig. 5B: Debris cloud coming off back door indicative of bullet strikes.

Vo collapsed around a corner in the employee work area. Vo's feet extended out into the hallway and were visible to the HRT, but Vo's hands were not visible. Accordingly, team members could not immediately ascertain whether Vo maintained control of his firearm, or otherwise posed a continuing threat. See Figure 6 below.



Fig. 6: Reverse angle shows Vo's legs sticking out into hallway where officers gave orders and dispatched K9.

When Vo collapsed after being shot, he dropped the gun and the bag. The gun remained within Vo's reach. Krueger ordered Vo to move towards officers and show his hands. Krueger described Vo as still moving, groaning as if in pain, but not complying with the orders to move to the hall. K9 Officer Harrison Moore gave a K9 announcement from approximately ten feet away, telling Vo that if he did not come out with his hands up a dog would be sent in to apprehend him and that the dog would bite him. Vo did not respond. Moore sent in K9 Andor. Andor bit Vo on the left ankle and dragged Vo around the corner; Moore assisted in this effort by pulling on Andor's attached leash. Once Vo was positioned in the hallway with his hands clearly visible, officers moved in and began to render first aid pending the arrival of paramedics. Vo was transported to Long Beach Memorial Hospital, where he succumbed to his injuries.

There is no indication that Vo ever discharged his pistol during the confrontation, although he held onto it until he fell. Vo's pistol, an Auto-Ordnance .45 caliber semiautomatic weapon, was loaded with five rounds of Federal .45 Auto ammunition.

Detective Todd Johnson conducted a round count on Krueger's AR-15. The rifle had one round in the chamber and 22 Winchester rounds remaining in the 30 round magazine affixed to the well.⁸ Krueger indicated that he loaded 28 rounds in his 30 round magazines. Five 5.56mm Winchester rifle casings were found in the hotel lobby. All five casings were confirmed as fired from Krueger's rifle. Three expended bullets were recovered in the area of the shooting and all three were determined to have been fired from Krueger's rifle. In addition, a small caliber jacketed bullet was recovered from Vo's wrist by the medical examiner; that bullet was also fired from Krueger's AR-15. Collectively this evidence confirms that Krueger fired five rounds.

Detective Robert Gonzales later conducted a round count on Pasion's service weapon. The pistol contained one round in the chamber and an additional four rounds in the ten round capacity magazine affixed to the magazine well. Six .45 caliber casings were found in the lobby. All six casings were microscopically compared to rounds test fired from Pasion's service weapon and confirmed as fired from that weapon.

Numerous bullet fragments were located in the lobby and in the employee area behind the wall where Vo collapsed after being shot. Fragmentation likely resulted from strikes against the front counter wall, and a strike against the floor molding plate along the back wall of the employee work area, although other impacts may have also resulted in fragmentation. Lab analysis attributed fifteen of the bullet fragments to rounds fired from Pasion's service weapon. An additional 28 fragments lacked sufficient characteristics and accordingly could not be matched.

On January 22, 2018, a post-mortem medical examination was conducted by Los Angeles County Department of Coroner Associate Deputy Medical Examiner Dr. Julie Huss-Bawab and Senior Deputy Medical Examiner Dr. Raffi Sarkis Djabourian. Dr. Bawab opined that Vo died from gunshot wounds. The report documented four gunshot wounds. The first documented gunshot entered the right lateral mid back and traveled right to left, back to front, slightly upward, exited mid chest, and was deemed fatal. The second documented gunshot entered the left lateral mid back, traveled back to front with no significant right or left angle, upward, exited at the left mid chest, and was deemed fatal. The third documented gunshot entered the right medial buttock, traveled slightly left to right, back to front, upward, exited the right lower abdomen, and was deemed fatal. The fourth gunshot wound penetrated the left wrist, traveled front to back with no significant right/left/upper angle, resulted in the bullet being lodged in the left anterior radius bone, and was deemed not fatal.

A toxicology report documented that Vo had ethanol, marijuana, and methamphetamine in his system.

During the post-shooting investigation, it was learned that Vo's ex-girlfriend and mother of Vo's children, Xuan P., had sole custody of the children; that the couple had separated years ago due to Vo's chronic drug use; and that Vo was only permitted supervised visitation at relatives' homes. In a post-shooting interview, Vo's older brother reported that Vo had been depressed about not being

⁸ Although Johnson's report indicates that he collected .223 caliber rounds from the magazines, the head stamps from a criminalist's lab photograph and corresponding lab notes indicate that the rounds fired were in fact 5.56mm rounds. While the two types of rounds are roughly the same size, they are distinguishable with the .223 round having a shorter distance before the rifling engages the bullet.

able to see his children regularly (he had last seen them at Christmas), and that Vo had been suicidal as recently as four or five months prior to the shooting.

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if the person claiming the right actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; *People v. Randle* (2005) 35 Cal.4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also*, CALCRIM No. 505. In evaluating whether a police officer's use of force is reasonable, it is helpful to draw guidance from the objective standard of reasonableness adopted in civil actions alleging Fourth Amendment violations: "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight. . . . The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." *Graham v. Connor* (1989) 490 U.S. 386, 396-397.

A police officer may use reasonable force to effect an arrest, prevent escape, or overcome resistance of a person the officer believes has committed a crime. Penal Code § 835a. An officer "may use all the force that appears to him to be necessary to overcome all resistance, even to the taking of life; [an officer is justified in taking a life if] the resistance [is] such as appears to the officer likely to inflict great bodily injury upon himself or those acting with him." *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1146. A killing of a suspect by a law enforcement officer is lawful if it was: (1) committed while performing a legal duty; (2) the killing was necessary to accomplish that duty; and (3) the officer had probable cause to believe that (a) the decedent posed a threat of serious physical harm to the officer or others, or (b) that the decedent had committed a forcible and atrocious crime. CALCRIM No. 507, Penal Code § 196. A forcible and atrocious crime is one which threatens death or serious bodily harm. *Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333.

In protecting oneself or another, a person may use all the force which that person believes reasonably necessary and that would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALCRIM No. 3470. If the person's beliefs were reasonable, the danger does not need to have actually existed. *Id.*

An officer has "probable cause" in this context when he knows facts which would "persuade someone of reasonable caution that the other person is going to cause serious physical harm to another." CALCRIM No. 507. When acting under Penal Code § 196, the officer may use only so much force as a reasonable person would find necessary under the circumstances. *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1147. The officer may only resort to deadly force when the resistance of the person being taken into custody "appears to the officer likely to inflict great bodily injury on himself or those acting with him." *Id.* at 1146; quoting *People v. Bond* (1910) 13 Cal.App. 175, 189-190. The prosecution has the burden of proving beyond a reasonable doubt that a killing was not justified. CALCRIM Nos. 505, 507. As noted by one California appellate opinion, "[w]here the peril is swift and imminent and the necessity for action immediate,

the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety.” *People v. Collins* (1961) 189 Cal.App.2d 575, 589.

The officers in this instance responded to a call of a person with a gun who was standing in a hotel lobby. When they arrived on scene they observed that Vo was in fact armed, had taken a hostage, and was giving orders to the hostage. These orders included Vo telling the hostage to go with Vo to a back room. Vo stood behind a hotel counter, an area normally reserved to hotel employees, in close proximity to the hostage. Vo held a bag consistent with someone committing a robbery.

Faced with a hostage situation, officers formulated a plan to exercise restraint so long as Vo remained in the lobby, but move quickly to intervene once Vo made movement to another area. After repeated demands for Joe H. to go into a back room, Vo placed the gun at Joe H.’s back, and finally forced Joe H. toward the hallway. Under these circumstances, it was reasonable for the officers to believe that Vo posed an immediate threat to Joe H.

The officers intervened and ordered Vo to drop the gun. Vo failed to comply. In fear for Joe H.’s life as well as the lives of others who they perceived might be in the area, Krueger and Pasion fired their weapons. Vo continued to cling to his pistol while fleeing to an area where he might have gained a tactical advantage.

In this tense, uncertain, and rapidly evolving situation, it was reasonable for Officers Krueger and Pasion to conclude that Vo’s actions posed a deadly threat to Joe H. and to others. The officers’ use of deadly force was reasonable under the circumstances.

CONCLUSION

We find that Officers Krueger and Pasion acted lawfully in defense of another when they used deadly force against Andy Le Vo. We are closing our file and will take no further action in this matter.